

Northern Long-eared Bat (NLEB) Consultation Guidelines

Background: The NLEB was listed by the U.S. Fish and Wildlife Service (USFWS) as threatened under the federal Endangered Species Act (ESA) on April 2, 2015. On January 14, 2016 a final rule was issued. The USFWS completed a programmatic intra-service Biological Opinion (BO) for the final NLEB 4(d) rule. For NRCS actions that are consistent with the BO and 4(d) rule, an optional streamlined consultation framework is available.

Explanation: The Natural Resources Conservation Service (NRCS) will use the USFWS' "Northern Long-Eared Bat 4(d) Rule Streamlined Consultation Form" (attached) to satisfy our 7(a)(2) ESA consultation responsibilities. This process requires NRCS to provide USFWS at least 30 days prior notification of a federal action. The following process is to be followed:

- 1) All contracts: For any practice involving tree removal that may affect the NLEB, no tree removal will be allowed during June 1– July 31 subject to (I) below.
- 2) All contracts signed after January 1, 2016: No tree removal will be planned or scheduled during June 1 – July 31 for any practice per the instructions below. For any practice involving tree removal that may affect NLEB, the *practice narrative* in the Contract Plan of Operations (CPO) NRCS-1155 must include the following language: *"No tree removal is to occur from June 1 to July 31. Tree removal must not take place until NRCS confirms that ESA requirements for NLEB have been met."*

Instructions for minimizing incidental take and promoting conservation of the NLEB

- I. Consultation **not** covered by the NLEB 4(d) Rule Streamlined Framework
Any tree removal within 1/4 mile of a NLEB hibernacula, 150 feet of a known maternity roost tree, or during the months of June and July may result in incidental take of NLEB that is not exempted by the final 4(d) rule. In these cases the streamlined 4(d) consultation framework is not to be used and normal ESA section 7 consultation will be required. Planning or scheduling under these circumstances may proceed only with State Conservationist (STC) concurrence, and may require site-specific monitoring approved by the USFWS.
- II. No Consultation Needed (does not meet conditions in (I.) above)
NRCS will make a "*No Effect*" determination for practices that do not involve tree removal or for practices that will involve tree removal, but will not affect NLEB. Requirements for a justifiable "*No Effect*" determination when trees will be removed include all of the following:
 - 1) The District Conservationist must document the planned action is not within ¼ mile of a known NLEB hibernacula or within 150 feet radius of a known NLEB maternity roost, *and*
 - 2) The planned action will involve one acre or less of cumulative tree removal, *and*
 - 3) Trees to be removed do not have notable cracks, cavities, sloughing or deeply fissured bark, *and*
 - 4) Trees targeted for removal are not in a riparian buffer along a natural water body or water course, *and*
 - 5) Trees to be removed are in a "*Non-Forestland*" Planning Land Unit (PLU); for example - an isolated group of trees in a farmstead PLU.

Note: During installation of conservation practices unplanned tree removal may be required. On a case-by-case basis, with concurrence of the NRCS State Biologist, practices may be considered to be "*No Effect*" if conducted during the period from November 1 to April 15.

- III. NLEB 4(d) rule Streamlined Consultation Required (does not meet I. or II. above)
These consultations will use the USFWS' "NLEB 4(d) Rule Streamlined Consultation worksheet, located in Field Office Technical Guide (FOTG) under Section II/Threatened and Endangered Species/Conservation Planning.

- 1) The worksheet and supporting documentation will be emailed to [Shay White](#), USFWS, with a cc: to [Wende Mahaney](#), Debbie Gray (debbie.gray@me.usda.gov), and Jeff Norment (jeff.norment@me.usda.gov). **Important - The email subject line must include the client's application or contract number:**
 - a. Upon receipt of explicit USFWS concurrence with NRCS or passage of 30 calendar days with no response since electronic submittal, document the consultation has been completed - see Step 3, ME-ECS-1 worksheet below.
 - b. At this point, fund obligation and/or execution of practices may proceed subject to the following: The USFWS' concurrence expires after one year. Re-initiation of consultation (i.e., streamlined worksheet re-submittal) will be necessary for uninstalled practices not meeting I. and II above.
- 2) The State Office will maintain a database to track consultation submittals and will work with Field Offices to maintain consultation status until practices are complete.

Documentation requirements

I. ME-ECS-1 worksheet

- 1) “*No Effect*” determinations and justifications for making a “*No Effect*” determination are to be documented under 3.A. of the ME-ECS-1 worksheet.
- 2) “*May Affect*” determinations for NLEB will be documented by:
 - a) Checking the “*No*” box under 3.B.ii
 - b) On page 3, under Federal Consultations
 - i) Check the box next to Northern Long-eared Bat,
 - ii) Under “*Anticipated Effect*”
 - (1) Choose from the drop-down list “*ESA-May Affect (Take excepted by 4(d) Rule)*”.
 - (2) Under the anticipated effects and measures to minimize impacts section, simply refer to the “*NLEB 4(d) Rule Streamlined Consultation Form*” for details.
- 3) If explicit concurrence with NRCS' NLAA determination is received from USFWS, or there is no response from the USFWS within 30 calendar days of worksheet submittal, check the “*Yes*” box under Step 5, and type in “*Federal ESA*” in the space provided.

II. NRCS-CPA-52, per National Bulletin 190-16-6

- 1) Record the NLEB effect determination as either “*No Effect*” or “*May Affect*”,
- 2) For “*May Affect*” determinations, reference the ME-ECS-1 worksheet for details.

Important planning considerations

- 1) During planning consider and prioritize alternatives that reduce likelihood of impacts to NLEB.
- 2) Encourage clients to conduct tree removal activities from November 1 to April 15 as a conservation measure to minimize potential impacts when bats are active. If the client agrees, document on the “*NLEB 4(d) Rule Streamlined Consultation Form*”.